

**DONOVAN | HATEM LLP**  
*counselors at law*

**Matthew M. O'Leary**  
617 406 4570 direct  
moleary@donovanhatem.com

April 11, 2005

**By Hand**

Civil Clerk's Office  
United States District Court  
One Courthouse Way  
Boston, MA 02210

**Re: Eastern Contractors, Inc. v. City of Worcester, et al.**  
**Civil Action No. 03-CV-12216MLW**

Dear Sir/Madam:

Enclosed for filing in the above-referenced matter is the **Motion of the Defendant, Heery International Inc., to Quash Subpoena Served on Flansburgh Associates, Inc. and for Protective Order.**

Thank you for your attention to this matter.

Very truly yours,



Matthew M. O'Leary

**Enclosure**

cc: David J. Hatem, PC  
Warren D. Hutchison, Esq.  
Donald V. Rider, Esq. (by first class mail with enclosures)  
Edward Quinlan, Esq. (by first class mail with enclosures)  
George Deptula, Esq. (by first class mail with enclosures)

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Motion UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
EASTERN CONTRACTORS, INC.,	)	
	)	Civil Action No. 03-12216MLW
Plaintiff,	)	
v.	)	
	)	
CITY OF WORCESTER and THOMAS	)	
R. HOOVER, City Manager, and HEERY	)	
INTERNATIONAL, INC. and THOMAS E.	)	
ELLIS, JR.	)	
	)	
Defendants.	)	
_____	)	

**MOTION OF THE DEFENDANT, HEERY INTERNATIONAL, INC., TO QUASH  
SUBPOENA SERVED ON FLANSBURGH ASSOCIATES, INC.  
AND FOR PROTECTIVE ORDER**

Pursuant to Fed. R. Civ. P. 26(c) and 46(c), the defendant, Heery International, Inc. (“Heery”), moves to quash the subpoena served on Flansburgh Associates, Inc. (“Flansburgh”) by the plaintiff, Eastern Contractors, Inc. (“Eastern”) and for a protective order. As grounds for this motion, Heery states that the subpoena served on Flansburgh seeks documents and testimony concerning a review of a bid submitted by Eastern for general construction contract for the construction of the new Lawrence High School in Lawrence, Massachusetts (“Lawrence Project”). The bids on the Lawrence Project and Flansburgh’s review of Eastern’s bid on the Lawrence Project both occurred months **after** the events that give rise to this lawsuit – namely the decision by the City of Worcester (“City”) not to award a contract for the construction of the Worcester Vocational High School in Worcester, Massachusetts (“Project”) to Eastern because the City determined that Eastern was not the lowest responsible bidder. As a result, any documents produced, or testimony provided, by Flansburgh in response to Eastern’s

subpoena are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Moreover, because the evidence sought by the subpoena served on Flansburgh is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, it requires Heery to incur unnecessarily the expense of Heery's counsel attending the Flansburgh deposition.

This motion is consistent with the Protective Order issued by the Court on March 15, 2005, when Heery sought protection from deposition questions and a document request that Eastern was pursuing to the extent that the questions and documents related to events after the bid phase of the Project that is the subject of this case. (See, Order, attached hereto as **Exhibit A**). As described in detail below, Heery requests that this Court grant its Motion to Quash and for Protective Order and order that the deposition of Flansburgh not be had and that Flansburgh not be required to produce any documents in response to Eastern's subpoena.

## **I. BACKGROUND**

This matter arises out of a decision by the City of Worcester ("City") not to award a contract for the construction of the Worcester Vocational High School in Worcester, Massachusetts ("Worcester Project") to Eastern because the City determined that Eastern was not the lowest responsible bidder. Heery's involvement with the Project is by virtue of a contract between Heery and the City whereby Heery agreed to provide construction management services on the Project, including but not limited to, reviewing general bids and advising the City regarding the award of the general bid.

After the City received general bids for the Project, Heery and the Project architect, Lamoureux Pagano Associates (“LPA”), conducted independent reviews of Eastern’s references, bid documents, and Division of Capital Asset Management (“DCAM”) update statement (“Update Statement”). During the course of their independent reviews, Heery and LPA discovered that there were a number of inaccurate statements and missing information in Eastern’s Update Statement. The City offered Eastern the opportunity to correct the inaccurate statements and missing information in the Update Statement but Eastern failed to do so. Therefore, Heery and LPA recommended to the City that the City consider not awarding the construction contract on the Project to Eastern. The City subsequently determined that Eastern was not the lowest responsible bidder and awarded the construction contract for the Project to the second lowest bidder, Consigli/O’Connor Joint Venture (“Consigli/O’Connor”).

Eastern filed this lawsuit against the City, the City Manager, Heery and Ellis. The claims against Heery and Ellis are: (1) violation of c. 93 §102 (Count I); (2) violation of 42 U.S.C. §1981 (Count II); (3) violation of 42 U.S.C. §1983 (Count III); (4) violation of 42 U.S.C. §1985 (Count IV); (5) negligent misrepresentation (Count X); (6) interference with advantageous relationships (Count XI); and, (7) violation of c. 93A (Count XII).

On or about January 14, 2005, Eastern served a subpoena on Flansburgh seeking information and documents relating to Flansburgh’s review of Eastern’s bid on the Lawrence Project. A copy is attached hereto as **Exhibit B**.

## **II. ARGUMENT**

### **A. STANDARD OF REVIEW.**

Rule 26(c) of the Federal Rules of Civil Procedure provides in relevant part:

Upon motion by a party or by the person from whom discovery is sought ... and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions ... (4) that certain matters not be inquired into ... .”

Fed. R. Civ. P. 26(c). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401.

Discovery may not be had regarding a matter which is not “relevant to the subject matter involved in the pending action.” Fed. R. Civ. P. 26(b)(1). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Even if relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information. Fed. R. Civ. P. 26(b)(1); Micro Motion, Inc. v. Kane Steel Co., 894 F.2d 1318, 1323 (Fed. Cir., 1990); American Standard, Inc. v. Pfizer Inc., 828 F.2d 734, 739-42 (Fed. Cir. 1987).

**B. A PROTECTIVE ORDER IS WARRANTED BECAUSE EASTERN REQUESTS TESTIMONY AND DOCUMENTS FROM FLANSBURGH THAT ARE IRRELEVANT TO THE ISSUES IN THIS CASE.**

An order that Eastern not be allowed to depose Flansburgh, or require Flansburgh to produce any documents, in response to Eastern’s subpoena is warranted in this case. In its Notice of Flansburgh’s Deposition, Eastern lists a number of items on which testimony is requested and requests a number of documents that are irrelevant to the

issues in this lawsuit. Despite the fact that Eastern's claims are limited to alleged inappropriate actions of Heery and the City during the bidding phase of the Worcester Project with respect to Eastern's bid, Eastern has requested testimony and documents from Flansburgh relating to the Lawrence Project, which went out to bid in late 2003. These requests seek irrelevant documents and testimony that are also not reasonably calculated to lead to the discovery of admissible evidence.

Flansburgh completed its review of Eastern's bid on the Lawrence Project In October of 2003. A copy of Flansburgh's letter to the Chairman of the Lawrence Buildign Committee is attached hereto as **Exhibit C**. Eastern apparently seeks to discover evidence supporting an argument that because Flansburgh recommended in October of 2003 that the City of Lawrence award the construction contract to Eastern, Heery should have recommended in March of 2003 to the City of Worcester that it award the construction contract for the Worcester Project to Eastern.<sup>1</sup> Flansburgh's recommendation to the City of Lawrence, completed approximately eight months after Heery reviewed Eastern's bid on the Worcester Project, has no bearing on any of the issues raised in this case. Moreover, requiring Heery to attend a deposition that is wholly irrelevant to the matters raised in this lawsuit places undue burden and expense on Heery. Heery should not be required to choose between paying counsel to attend a deposition seeking irrelevant evidence or being prejudiced by having no representative present at the deposition.

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<sup>1</sup> Eastern made a similar argument in its Opposition to Heery's Motion for Summary Judgment, which is pending before the Court.

For the foregoing reasons, a Protective Order preventing Eastern from deposing Flansburgh or requiring Flansburgh to produce any documents in response to Eastern's subpoena is warranted.

**C. EASTERN'S SUBPOENA TO FLANSBURGH MUST BE QUASHED BECAUSE IT SUBJECTS HEERY AND FLANSBURGH TO UNDUE BURDEN.**

In addition, the subpoena served on Flansburgh by Eastern should be quashed. The subpoena subjects Flansburgh and Heery to undue burden. Flansburgh is subjected to undue burden because it is required to produce irrelevant documents and spend significant amounts of time preparing for a deposition that has no bearing on the issues in this lawsuit. In addition, Heery will be required to pay its counsel to prepare for and to attend a deposition that has no bearing on this lawsuit. As a result, the subpoena served on Flansburgh by Eastern should be quashed.


**III. CONCLUSION**

For the foregoing reasons, Heery requests that this Court GRANT its motion for a Protective Order preventing Eastern from deposing Flansburgh or requiring Flansburgh to produce any documents in response to Eastern's subpoena is warranted and QUASH the subpoena served on Flansburgh by Eastern.

**RULE 26(c) AND LOCAL RULE 7.1(A)(2) CERTIFICATION**

Counsel for Heery hereby certifies that they have attempted to confer with counsel for Eastern in good faith to resolve or narrow the issues.

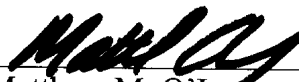
HEERY INTERNATIONAL, INC. and  
THOMAS A. ELLIS,  
By their attorneys,

  
\_\_\_\_\_  
David J. Hatem, FC BBO # 225700  
Warren D. Hutchison BBO # 246150  
Matthew M. O'Leary BBO # 652033  
DONOVAN HATEM LLP  
Two Seaport Lane  
Boston, MA 02210  
(617) 406-4500

Dated: April 11, 2005

**CERTIFICATE OF SERVICE**

I, Matthew M. O'Leary, hereby certify that on this 11th day of April, 2005, I served a copy of the foregoing on all counsel of record by first class mail, postage prepaid.

  
\_\_\_\_\_  
Matthew M. O'Leary

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Issued by the  
**UNITED STATES DISTRICT COURT**

DISTRICT OF MASSACHUSETTS

EASTERN CONTRACTORS, INC.,  
Plaintiff,

v.

CITY OF WORCESTER and  
THOMAS R. HOOVER, City Manager, and  
HEERY INTERNATIONAL INC., and  
THOMAS A ELLIS  
Defendants,

**SUBPOENA IN A CIVIL CASE**

CASE NUMBER: <sup>1</sup> 03CV-12216MLW

TO: Flansburgh Associates, Inc.  
77 North Washington Street  
Boston, MA 02114

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Vena, Riley, Deptula LLP

250 Summer Street, 2<sup>nd</sup> Floor, Boston, MA 02210

DATE AND TIME

February 11, 2005 at 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHED EXHIBIT A

PLACE

Vena, Riley, Deptula LLP

250 Summer Street, 2<sup>nd</sup> Floor, Boston, MA 02210

DATE AND TIME

February 11, 2005 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Sabatino F. Leo, Esq., Attorney for Plaintiff

January 14<sup>th</sup>, 2005

Vena Riley Deptula LLP, 250 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02210 (617) 951-2400

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**UNITED STATES DISTRICT COURT OF MASSACHUSETTS**

Civil Action No.: 03CV-12216MLW

EASTERN CONTRACTORS, INC., )  
Plaintiff )  
V. )  
CITY OF WORCESTER and )  
THOMAS R. HOOVER, )  
City Manager, and )  
HEERY INTERNATIONAL INC., )  
and THOMAS E. ELLIS, JR. )  
Defendants )

**NOTICE OF TAKING 30(b)(6) DEPOSITION**

TO: Warren D. Hutchison, Esquire  
Donovan Hatem LLP  
Two Seaport Lane  
Boston, MA 02210

Donald Rider, Esquire  
City of Worcester Law Department  
City Hall, Room 301  
Worcester, MA 01608

Please take notice that, commencing at 10:00 a.m. on Friday February 11, 2005, at the offices of Vena, Riley, Deptula, LLP, 250 Summer Street, 2<sup>nd</sup> Floor, Boston, MA, the Plaintiff in this action, Eastern Contractors Inc., by its attorneys, will take the deposition upon oral examination of Flansburgh Associates, Inc. by one or more of its members, officers or employees to be designated by Flansburgh Associates, Inc. pursuant to the Federal Rules of Civil Procedure. The designee(s) is(are) requested to be the most knowledgeable person(s) concerning each topic of examination. The designee(s) should

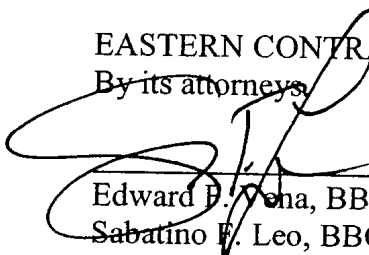
be prepared to testify to the topics listed in Exhibit A attached hereto. The designee(s) is further requested to bring all documents listed in Exhibit A attached hereto.

The deposition shall take place before a Notary Public or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

EASTERN CONTRACTORS, INC.

By its attorneys



Edward P. Vena, BBO No.: 508660  
Sabatino F. Leo, BBO No.: 642302  
George C. Deptula, BBO No. 120820  
Vena, Riley, Deptula, LLP  
250 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02210  
(617) 951-2400



Edward J. Quinlan, BBO No.: 409060  
Quinlan & Sadowski, P.C.  
11 Vanderbilt Avenue, Suite 250  
Norwood, MA 02062  
(781)440-9909

Dated:

January 14, 2005

**EXHIBIT A**  
**DEFINITIONS AND INSTRUCTIONS**

1. The terms "document" or "documents" mean and shall include the original and any non-identical copy of all papers, writings, agreements, financial statements, invoices, recordings, proposals, drawings, summaries, graphs, files, brochures, pamphlets, circulars, records, ledgers, journals, tax returns and schedules, diaries, calendars, studies, books, notebooks, work sheets, charts, bulletins, forms, indices, tapes, cards, cables statements, lists, tabulations, computer printouts, computer disks and/or diskettes, data processing input and output, microfilms, periodicals, court papers, affidavits, catalogs, instructions, work papers, surveys, orders, vouchers, data sheets, negatives, projections, analyses, magazines, articles, literature, newspapers, notes, minutes, letters, telegrams, memoranda, reports, photographs, transcripts, photographic and retrievable data (whether encarded, taped or coded electrostatically, electromagnetically or otherwise, and all other documents or materials of any nature whatsoever, together with any drafts thereof, attachments thereto or enclosures therewith, in the possession, custody or control of a party.
2. "Concerning" or "relating to" as used herein, shall include but not be limited to: referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, constituting, illustrating, depicting, summarizing, mentioning, recording, evidencing, supporting, contradicting or rebutting, directly or by inference.
3. The term "Worcester" refers to the Defendant, City of Worcester and any of its representatives, agents, employees, principals, officers, subsidiaries, parent companies, related entities, and attorneys.
4. The term "Lawrence Project" refers to the public building project known as the new Lawrence High School Project, Lawrence, Massachusetts.
5. The term "Hoover" refers to the Defendant, Thomas R. Hoover, City Manager, City of Worcester.
6. The term "Heery" refers to the Defendant, Heery International Inc., and any of its representatives, agents, employees, principals, associates, parent companies, subsidiaries, affiliates, and attorneys, including any of its consultants, subcontractors or others performing work or services for Heery International, Inc.
7. The term "Ellis" refers to the Defendant, Thomas E. Ellis.
8. The term "Eastern" refers to the Plaintiff, Eastern Contractors, Inc.
9. The term "Flansburgh" refers to Flansburgh Associates, Inc., and any of its representatives, agents, employees, principals, associates, parent companies, subsidiaries, affiliates, and attorneys, including any of its consultants, subcontractors or others performing work or services for Flansburgh Associates, Inc.

10. The term "Project" shall refer to the design bidding and construction of the Worcester Vocational High School, which is the subject of this action.
11. The term "Heery Report" refers to the March 19, 2003, letter to Jill C. Dagilis from Thomas E. Ellis, Jr and any investigation related thereto.
12. The term "action" or "actions" means any investigation, meeting, correspondence, communication, request, demand, computer or other inquiry or entry, research or any other activity.
13. The term "communication" means any oral or written utterance, notation, statement, conversation and discussion of any nature and any non-verbal behavior included as part of, or constituting a separate communication, also including email or computer entries

### **DOCUMENTS REQUESTED**

1. Any and all documents which constitute or evidence pre-qualification investigations, investigation of qualifications, investigation of references and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
2. Any and all documents which constitute or evidence any and all communications to include but not be limited to telephone and/or email transmissions, by and/or between Flansburgh and any other person, party or entity as it relates to any and all prequalification investigations, investigation of qualifications, investigation of references and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
3. Any and all documents which constitute or evidence inter-office, intra-office, internal and/or external memoranda of Flansburgh as it relates to the pre-qualification investigations, investigation of qualifications, investigation of references and/or other inquiries regarding Eastern's bid on the Lawrence Project.
4. Any and all documents used, received, generated and/or created by Flansburgh as it relates to the pre-qualification investigations, investigation of qualifications, investigation of references and/or other inquiries regarding Eastern's bid on the Lawrence Project.
5. Any and all documents which constitute or evidence pre-qualification investigations, investigation of qualifications, investigation of references, and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
6. Any and all files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records of Jorge M. Cruz, AIA, Senior Associate, relating to any prequalification investigations, investigations of qualifications, investigations of references, and/or any other inquiries regarding Eastern's bid on the Lawrence Project.

7. Any and all documents which constitute or evidence notices, memoranda, agreements, communications, to include but not be limited to telephone communications and email transmissions, by and/or between Flansburgh and any other person party or entity relating to bid submissions on the Lawrence Project.
8. Any and all documents used, received, generated and/or created by Flansburgh during its review of Eastern's bid submission on the Lawrence Project.
9. Any and all documents concerning the selection of any bid, bids or bidders for the Lawrence Project.
10. Any and all documents used, received, generated and/or created by Flansburgh in its drafting of its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee, regarding "Eastern Contractors Bid Submission" to include but not be limited to the "City of Worcester letter dated March 26, 2003", "Heery International's letter dated March 19, 2003" and "Macomber's letter dated October 29, 2003."
11. Any and all documents relating to Flansburgh's determination that Eastern was the "lowest responsible and eligible bidder" on the Lawrence Project.
12. Any and all documents contained in or part of any and all files of Jorge M. Cruz, AIA, Senior Associate, relating to the Lawrence Project.
13. All documents concerning any and all communications, of any kind, including but not limited to telephone and email communications, of Jorge M. Cruz, AIA, Senior Associate, relating to the Lawrence Project, and particularly relating to Eastern.
14. Any and all documents which constitute or evidence the Heery Report, including but not limited to all files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.
15. Any and all document which constitute or evidence all files, of any kind, of Flansburgh or any representative of same, concerning the Heery Report, to include but not be limited to, files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.
16. Any and all documents, of any kind, related to critiques or criticisms of Eastern in the Heery Report to include but not be limited to, files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.

### **TOPICS OF INQUIRY**

1. All facts, actions and/or communications concerning any and all documents set forth in the preceding Documents Requested attached hereto.
2. All facts, actions and/or communications concerning all communications regarding Flansburgh's review of the contents of the Heery Report.
3. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "Eastern Contractors Inc. is the lowest responsible and eligible bidder."
4. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "the issues outlined in the City of Worcester letter and Heery International letter have been adequately resolved with the issuance of Eastern's current Certificate of Eligibility."
5. All facts, actions and/or communications concerning the knowledge and state of mind of Jorge M. Cruz, AIA, Senior Associate, relating to Flansburgh's decision to award the Lawrence High School project to Eastern.
6. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "Eastern Contractors possess the skill, ability, and integrity necessary to faithfully perform the work."
7. All facts, actions and/or communications concerning the role of each individual officer or employee of Flansburgh concerning the investigation of Eastern, to include but not be limited to, the identity of each individual, letters read, reviewed documents, and interviews of owners/architects.



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.2003-CV-12216-MLW

EASTERN CONTRACTORS, INC.,  
Plaintiff

V.

CITY OF WORCESTER  
and THOMAS R. HOOVER, City Manager,  
and HEERY INTERNATIONAL, INC.,  
and THOMAS E. ELLIS, JR.,  
Defendants

**ORDER ON**

**MOTION OF THE DEFENDANT, HEERY  
INTERNATIONAL, INC., FOR PROTECTIVE ORDER  
(Docket # 42)**

ALEXANDER, M.J.

Defendant Heery International, Inc. ("Heery"), has filed a motion for a protective order in connection with the Fed. R. Civ. P. 30(b)(6) deposition of Heery scheduled to be taken tomorrow, March 16, 2005, by plaintiff Eastern Contractors, Inc. ("Eastern"). Heery asserts that the deposition notice includes topics of examination that are not relevant to Eastern's claims against Heery, and that are, in addition, overly broad and unduly burdensome. Heery also asserts that the documents that Eastern has requested that Heery produce at the deposition are



similarly irrelevant, and the requests similarly overly broad and unduly burdensome.

Eastern's claims against Heery stem from the award by defendant City of Worcester ("the City") of a public construction contract ("the project") to Consigli/O'Connor Joint Venture rather than to Eastern. Heery was hired by the City to act as construction manager for the project, and Heery's duties included, *inter alia*, reviewing the bids and recommending to the City which contractor should be awarded the project. Eastern's claims against Heery are based on the portion of Heery's duties related to the bid phase and award of the project, rather than to any of Heery's post-award duties.

Heery asserts that the topics about which Eastern proposes to question Heery, and the documents that Eastern seeks, seek irrelevant information, and are overly broad, because they include information that is unrelated to the bid phase of the project. Heery seeks in its protective order, therefore, to limit Eastern's topics of inquiry and documents produced by Heery to the bid phase of the project. Heery's position is a valid one to the extent that Eastern's claims against Heery relate to Heery's role during the bid phase of the project, and Heery's motion for a protective order is therefore ALLOWED.

SO ORDERED.

3/15/05  
Date

/S/ Joyce London Alexander  
United States Magistrate Judge

T 25 2004 11:40 FR HAS BOSTON 30 3

TO 99512420

P.04/12

FROM FLANSBURGH ASSOCIATE

(FRI) 10 22 2004 10:23/ST. 10:23/NO. 5112785216 P 2

## FLANSBURGH ASSOCIATES

07 November 2003

Mr. Wayne Capolupo  
Chairman of Lawrence Building Committee  
SPS New England, Inc.  
98 Elm Street  
Salisbury, MA 01952

RE: Eastern Contractors Bid Submission

Dear Mr. Capolupo,

As outlined in the Project Manual Volume No. 1 of the bid documents, "Instructions to Bidders", paragraph 1.12 Method of Award, Flansburgh Associates, Inc. has completed its review of Eastern Contractors bid submission based on the Method of Award.

Flansburgh Associate, Inc. has adhered to the term "lowest responsible and eligible bidder" as defined in the provisions of Chapter 149, Sections 44A through 44F; as well as the "Instructions to Awarding Authorities" as outlined in the update statement instructions of the Division of Capital Asset Management.

We have reviewed Eastern Contractors Certificate of Eligibility at the DCAM office in addition to Eastern's evaluation forms based on the requirements listed above. We have also reviewed Eastern Contractor's update statement, the City of Worcester letter dated March 26, 2003, Heery International's letter dated March 19, 2003, and Macomber's letter dated October 29, 2003.

As was reported on October 29, 2003 at the Lawrence School Building Committee meeting, our preliminary findings for the three bidders were as follows:

Comparative Criteria	Firm Names		
	Eastern Contractors Inc.	George B.H. Macomber Co.	Suffolk Construction
1. Quality of Work	Above Average	Above Average	Average
2. Performance and Accountability	Average	Above Average	Average
3. Subcontractor (project) Management	Average	Above Average	Above Average
4. Construction Procedures	Below Average	Above Average	Average
5. Change Orders	Average	Average	Average
6. Working Relationships	Above Average	Above Average	Above Average
7. Paperwork Processing	Below Average	Above Average	Average
8. On-sits Supervisory Personnel Rating	Average	Average	Average
Average DCAM Rating	91	92	87
Note: Based on random selection of DCAM rated projects for evaluation purposes only.			

Architecture  
Master Planning  
Programming  
Interior Design

Principals  
David S. Solcan, AIA  
Alan S. Ross, AIA  
Duncan R. McClelland, AIA  
Sidney R. Bowen, III

Chairman  
Earl R. Flansburgh, FAIA, NA

Senior Associates  
Samuel Bird, AIA  
Jorge M. Cruz, AIA  
Rose M. Fiore, Assoc. AIA

Associates  
Valerie M. Curcio  
David R. DeFilippo, AIA  
Vincent B.J. Dubé, AIA  
James A. Highum, AIA  
Peter W. Lambert  
Thomas J. Mueller, AIA  
Dominic L. Padulla, Assoc. AIA  
Robert B. Peirce, AIA  
James B. Williams, Jr., AIA

FROM FLANSBURGH ASSOCIATE

(FRI)10 22 2004 10:24/ST. 10:23/NO. 5112765215 P 3

## FLANSBURGH ASSOCIATES

We reported at that time that there was no apparent reason to reject Eastern's bid based on our preliminary review. We have since completed our evaluation and contacted individuals on Eastern Contractors' update statement. We have found that Eastern's Certificate of Eligibility is current as of June 2003 and their update statement is complete.

The following analysis reflects comments from various firms listed on Eastern Contractor's update statement for bo

1-Quality of Work - Complete Projects.	DCAM	Contact	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Above Average	Flansburgh Associates	Good Quality/Very Cooperative
2. Diamond & Clark Middle Schools, Ludington, Ma.	Above Average	RDPH	Very Cooperative/Strong Initiatives
3. Tyngsborough Elementary School, Tyngsborough, Ma.	Above Average	Capitol Blank	Very responsive/Understands Site Issues, deals Efficiently
4. West Tisbury Elementary School, Tisbury, Ma.	Average	Keyer	No Issues with GC
5. Bellingham High School, Bellingham, MA	-	McQuinn Group	Cooperative
6. Van Sickle School, Springfield, Ma.	Average	Capitol Blank	Cooperative in Dealing with Contaminated Site
7. Fawcett & I.G. Fyfe School, Lowell, Ma.	Average	DRA	Good Quality/Very Cooperative
8. Frampton/Lakeville Regional School, Frampton, Ma.	Above Average	Kennel Boos	Good Working Relations
9. South Street Elementary School, Walham, Ma.	Average	Flansburgh Associates	Good Work/Cooperative

DCAM Question - Rate the quality of the work, problems attributable to the contractor and their cooperation in resolving the problem.

2 - Project Management a) - Scheduling	DCAM	Contact	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Above Average	Flansburgh Associates	Finished Project 2 months ahead of schedule
2. Diamond & Clark Middle Schools, Ludington, Ma.	Above Average	RDPH/Above Average	Excellent
3. Tyngsborough Elementary School, Tyngsborough, Ma.	Above Average	Capitol Blank/Above Average	Site Delays
4. West Tisbury Elementary School, Tisbury, Ma.	Average	Keyer/Average	On Schedule
5. Bellingham High School, Bellingham, MA	-	McQuinn Group	Good
6. Van Sickle School, Springfield, Ma.	Average	Capitol Blank/Average	Cooperative in Dealing with Schedule
7. Fawcett & I.G. Fyfe School, Lowell, Ma.	-	DRA, Inc.	Good
8. Frampton/Lakeville Regional School, Frampton, Ma.	-	Kennel Boos Assoc	Understand Site Issues, Project Low
9. South Street Elementary School, Walham, Ma.	Average	Flansburgh Associates	On Schedule with Time Extension

DCAM Question - Rate the contractor's performance regarding contract schedule, was it met, were delays attributable to the Contractor.

b) - Subcontractor Management	DCAM	Contact	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Above Average	Flansburgh Associates	No Subcontractor Issues
2. Diamond & Clark Middle Schools, Ludington, Ma.	Above Average	RDPH	Good/No Unresolved Problems
3. Tyngsborough Elementary School, Tyngsborough, Ma.	-	Capitol Blank	Good Working Relations
4. West Tisbury Elementary School, Tisbury, Ma.	-	Keyer	Good Relations
5. Bellingham High School, Bellingham, MA	-	McQuinn Group	Good
6. Van Sickle School, Springfield, Ma.	-	Capitol Blank	Cooperative in Dealing with Subcontractors
7. Fawcett & I.G. Fyfe School, Lowell, Ma.	-	DRA, Inc.	Smooth Relations/Good Relations with GC
8. Frampton/Lakeville Regional School, Frampton, Ma.	-	Kennel Boos Assoc	Poor Subcontractor Management
9. South Street Elementary School, Walham, Ma.	Average	Flansburgh Associates	Site Contractor Issues

DCAM Question - Rate this contractor's ability, effort, and success in managing and coordinating subcontractors.

J 25 2004 11:41 FR HAS BOSTON 30 3

TO 99512420

P.06/12

FROM FLANSBURGH ASSOCIATE

(FRI) 10 22 2004 10:25/ST. 10:25/NO. 5112765215 P 4

## FLANSBURGH ASSOCIATES

c) - Safety & Housekeeping	DCAM	Contract	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Average	Flansburgh Associates	Good Working Relationship/No Issues
2. Diamond & Clark Middle Schools, Leighton, Ma.	-	RMFH	No Issues
3. Tyngsboro Elementary School, Tyngsboro, Ma.	-	Carole & Benik	No Issues
4. West Taunton Elementary School, Taunton, Ma.	-	Koyas	No Issues
5. Wollingham High School, Bellingham, MA	-	McGuire Group	Good
6. Van Sickle School, Springfield, Ma.	-	Carole & Benik	No Issues
7. Pawtucket A.I.G. Pym School, Lowell, Ma.	-	DRA, Inc.	Very Good
8. Frampton/Lakeville Regional School, Frampton, Ma.	-	Kamela Bone Assoc.	No Issues
9. South Street Elementary School, Waltham, Ma.	Average	Flansburgh Associates	No Issues

DCAM Question - Rate this contractor's safety and housekeeping procedures. Were there any OSHA violations or serious accidents?

d) - Change Order	DCAM	Contract	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Above Average	Flansburgh Associates	Low Change Orders
2. Diamond & Clark Middle Schools, Leighton, Ma.	Above Average	RMFH	Low Change Order Rate
3. Tyngsboro Elementary School, Tyngsboro, Ma.	-	Carole & Benik	Low Change Order Rate
4. West Taunton Elementary School, Taunton, Ma.	Below Average	Koyas	High Change Order Rate
5. Wollingham High School, Bellingham, MA	-	McGuire Group	Good
6. Van Sickle School, Springfield, Ma.	-	Carole & Benik	Fair
7. Pawtucket A.I.G. Pym School, Lowell, Ma.	-	DRA, Inc.	Very Good/Reasonable
8. Frampton/Lakeville Regional School, Frampton, Ma.	-	Kamela Bone Assoc.	Reasonable
9. South Street Elementary School, Waltham, Ma.	Average	Flansburgh Associates	Within Project Contingency

DCAM Question - Did this Contractor unreasonably claim change orders, was the pricing reasonable?

e) - Working Relations	DCAM	Contract	Comments
1. Trion Regional Jr./Sr. High School, Byfield, Ma.	Above Average	Flansburgh Associates	Very Cooperative/Team Players
2. Diamond & Clark Middle Schools, Leighton, Ma.	-	RMFH	Good
3. Tyngsboro Elementary School, Tyngsboro, Ma.	-	Carole & Benik	Good Working Relationship
4. West Taunton Elementary School, Taunton, Ma.	-	Koyas	Good
5. Wollingham High School, Bellingham, MA	-	McGuire Group	Good
6. Van Sickle School, Springfield, Ma.	-	Carole & Benik	Cooperative
7. Pawtucket A.I.G. Pym School, Lowell, Ma.	-	DRA, Inc.	Smooth Relations
8. Frampton/Lakeville Regional School, Frampton, Ma.	-	Kamela Bone Assoc.	Good Working Relationship
9. South Street Elementary School, Waltham, Ma.	Average	Flansburgh Associates	Cooperative

DCAM Question - Rate this contractor's working relations with the designer, owner, etc., did they conduct themselves in a professional manner?

J 25 2004 11:41 FR HAS BOSTON 30 3

TO 99512420

P.07/12

FROM FLANSBURGH ASSOCIATE

(FRI)10 22 2004 10:25/ST. 10:29/NO. 5112755215 P 5

## FLANSBURGH ASSOCIATES

f) - Paperwork Processing	DCAM	Contact	Comments
1. Triton Regional Jr./Sr. High School, Weyfield, Ma.	Average	Flansburgh Associates	Good
2. Diamond & Clark Middle Schools, Lehigh, Ma.	-	HMFR	Very Good
3. Tyngsboro Elementary School, Tyngsboro, Ma.	-	Cook & Blum	Good
4. West Taunton Elementary School, Taunton, Ma.	-	Kayes	Good
5. Holliston High School, Holliston, MA	-	McQuire Group	Good
6. Van Sickle School, Springfield, Ma.	-	Cook & Blum	Good
7. Freetown B.O. Fries School, Lowell, Ma.	-	DRA, Inc.	Good/Reasonably Complete and Prompt
8. Freetown/Lakeville Regional School, Freetown, Ma.	-	Kasala Book Assoc	Fair
9. South Street Elementary School, Waltham, Ma.	Average	Flansburgh Associates	Good

DCAM Question - Rate the contractors performance in completing and processing paperwork.

g) - On-Site Supervisory Personnel	DCAM	Contact	Comments
1. Triton Regional Jr./Sr. High School, Weyfield, Ma.	Average	Flansburgh Associates	Good/Very Experienced
2. Diamond & Clark Middle Schools, Lehigh, Ma.	Above Average	HMFR	Very Good
3. Tyngsboro Elementary School, Tyngsboro, Ma.	-	Cook & Blum	Good
4. West Taunton Elementary School, Taunton, Ma.	-	Kayes	Good
5. Holliston High School, Holliston, MA	-	McQuire Group	Good
6. Van Sickle School, Springfield, Ma.	-	Cook & Blum	Good
7. Freetown B.O. Fries School, Lowell, Ma.	-	DRA, Inc.	Very Good
8. Freetown/Lakeville Regional School, Freetown, Ma.	-	Kasala Book Assoc	Understand the Issues/Poor Coordination
9. South Street Elementary School, Waltham, Ma.	Average	Flansburgh Associates	Good/Very Experienced

DCAM Question - Rate the general performance of the contractors on site supervisory personnel.

FROM FLANSBURGH ASSOCIATE

(FRI) 10 22 2004 10:25/ST. 10:29/NO. 5112785215 P 8

# FLANSBURGH ASSOCIATES INCOMPLETE PROJECTS

1- Quality of Work -	DCAM	Contract	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Recovered from Slip Issues/ Project back on Schedule
2. Whetstone Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architects Involvement	Very Good
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Generally Good
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Good
6. New Chicago High School, Chicago, Ma.	-	Mt Vernon Group	Generally Good
7 Add. & Ren. Framingham H. S., Framingham, Ma.	-	DRNeco Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfield Inc.	Good
9. Algonquin Regional High School, Waltham, Ma.	-	Sokolowsky & Hall Inc.	-

DCAM Question - Rate the quality of the work, problems attributable to the contractor and their cooperation in resolving the problem.

2 - Project Management a) - Scheduling	DCAM	Contract	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Could have been more Aggressive with F&B Sub Tracked Schedule
2. Whetstone Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architects Involvement	Very Good/Almost off Schedule
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Weak Planning
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Delays Caused by Poor Scheduling with the F&B Sub Tracked
6. New Chicago High School, Chicago, Ma.	-	Mt Vernon Group	Good
7 Add. & Ren. Framingham H. S., Framingham, Ma.	-	DRNeco Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfield Inc.	Generally Good
9. Algonquin Regional High School, Waltham, Ma.	-	Sokolowsky & Hall Inc.	-

DCAM Question - Rate the contractors performance regarding contract schedule, was it met, were delays attributable to the Contractor?

b) - Subcontractor Management	DCAM	Contract	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Unforeseen Site Contamination/Delay with F&B Sub Bids Times
2. Whetstone Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architects Involvement	Very Good/TM/Close at Moving Project Along/Difficult
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Poor Sub-contractor Scheduling
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Unforeseen Site Issues/Da Schedule
6. New Chicago High School, Chicago, Ma.	-	Mt Vernon Group	Good
7 Add. & Ren. Framingham H. S., Framingham, Ma.	-	DRNeco Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfield Inc.	Good Site PM, Aggressive/Initial Site Cont. problems
9. Algonquin Regional High School, Waltham, Ma.	-	Sokolowsky & Hall Inc.	HCI took over Site/Project on Schedule

DCAM Question - Rate this contractor's ability, effort, and success in managing and coordinating subcontractors.



FROM FLANSBURGH ASSOCIATE

(FRI)10 22 2004 10:26/ST. 10:28/NO. 5112765215 P 7

## FLANSBURGH ASSOCIATES

c) - Safety & Housekeeping	DCAM	Contact	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Very good - No serious safety incident.
2. Wetherbee Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architecture Involution	Very Good
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Good
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Good
6. New Chelmsford High School, Chelmsford, Ma.	-	Mt Vernon Group	Good
7 Add. & Ren. Framingham H. S. Lowell, Framingham, Ma.	-	Design Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfeld Inc.	Good
9. Algonquin Regional High School, Waltham, Ma.	-	Stokolsky & Holt Inc.	-

DCAM Question - Rate the contractor's safety and housekeeping procedures. Were there any OSHA violations or serious accidents?

d) - Change Order	DCAM	Contact	Did GC unreasonably claim change orders / wins
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Very good/Pricing was reasonable.
2. Wetherbee Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architecture Involution	Fair/Not Aggressive on CO
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Reasonable
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Fair on CO
6. New Chelmsford High School, Chelmsford, Ma.	-	Mt Vernon Group	Fair
7 Add. & Ren. Framingham H. S., Framingham, Ma.	-	Design Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfeld Inc.	Fair
9. Algonquin Regional High School, Waltham, Ma.	-	Stokolsky & Holt Inc.	-

DCAM Question - Did this Contractor unreasonably claim change orders, was the pricing reasonable.

e) - Working Relations	DCAM	Contact	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mt Vernon Group	Very Good/PM related well with Owner/Designer (within difficult site)
2. Wetherbee Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architecture Involution	Excellent / Very Cooperative with Client/Designer
4. Norwood Middle School, New Bedford, Ma.	-	Mt Vernon Group	Generally good
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Good
6. New Chelmsford High School, Chelmsford, Ma.	-	Mt Vernon Group	Generally good working close with help process
7 Add. & Ren. Framingham H. S. Lowell, Framingham, Ma.	-	Design Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfeld Inc.	Generally good
9. Algonquin Regional High School, Waltham, Ma.	-	Stokolsky & Holt Inc.	-

DCAM Question - Rate the contractor's working relations with the designer, owner, etc., did they conduct themselves in a professional manner.



ET 25 2004 11:41 FR HAS BOSTON 30 3

TO 99512420

P.10/12

FROM FLANSBURGH ASSOCIATE

(FRI)10 22 2004 10:28/ST. 10:28/NO. 5112765215 P 8

## FLANSBURGH ASSOCIATES

1) - Paperwork Processing	DCAM	Comments	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mr Vernon Group	Good - Reasonably complete & prompt
2. Whitaker Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architecture Evolution	Very Good
4. Normanton Middle School, New Bedford, Ma.	-	Mr Vernon Group	Generally Good
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Good
6. New Cheshire High School, Cheshire, Ma.	-	Mr Vernon Group	Good
7 Add. & Ren. Framingham H.S., Framingham, Ma.	-	DiNisco Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfield Inc.	Good
9. Algonquin Regional High School, Waltham, Ma.	-	Stratovsky & Holt Inc.	-

DCAM Question - Rate the contractor's performance in completing and processing paperwork.

1) - On-Site Supervisory Personnel	DCAM	Comments	Comments
1. Greene & Borden Schools, Fall River, Ma.	-	Mr Vernon Group	Very Good/FM able to move project appropriately
2. Whitaker Elementary School, Lawrence, Ma.	-	Flansburgh	-
3. Lynnfield Middle School, Lynnfield, Ma.	-	Architecture Evolution	Site
4. Normanton Middle School, New Bedford, Ma.	-	Mr Vernon Group	Fm was not focused on this project - scattered on multiple projects
5. Medway High School, Medway, Ma.	-	Partnership of Cambridge	Good Site FM/First Sub-Corr. time was not performing/made-up last time
6. New Cheshire High School, Cheshire, Ma.	-	Mr Vernon Group	Good
7 Add. & Ren. Framingham H.S., Framingham, Ma.	-	DiNisco Design Partnership	-
8. Lincoln Sudbury Regional High School, Sudbury, Ma.	-	M Rosenfield Inc.	Good Site FM/ Makes sure FMs do not perform multiple duties
9. Algonquin Regional High School, Waltham, Ma.	-	Stratovsky & Holt Inc.	-

DCAM Question - Rate the general performance of the contractor's on-site supervisory personnel.

CT 25 2004 11:42 FR HAS BOSTON 30 3

TO 99512420

P.11/12

FROM FLANSBURGH ASSOCIATE

(FRI) 10 22 2004 10:26/ST. 10:29/NO. 5112785215 P 9

## FLANSBURGH ASSOCIATES

## Conclusion:

1. Eastern Contractors' Certificate of Eligibility is current. Issues outlined in the City of Worcester's letter and Heery International's letter have been addressed in their June 2003 certificate.
2. Eastern's update statement information is correct and executed in accordance with DCAM requirements with only one item to be addressed by Eastern Contractors.
3. Part 3 -- Project Performance, Question C; "Has your firm failed or refused to complete any punchlist work under any contract?" Eastern's answer is "No". Our review of the update statement found various projects that had incomplete punchlists. Even though not a single contract indicated that Eastern failed or refused to complete punchlists, we requested a further explanation from Eastern Contractors regarding their answer on Question No. 3. (See attached letter)
4. Concerning the question of schedule adherence - Our review found Eastern to be average, no better and no worse than their counterparts in public construction projects. In the cases we reviewed, delays in schedules were adjusted with time extensions granted by the awarding authorities without penalty to Eastern Contractors.
5. Regarding the issue of change orders - Our review found Eastern to be average, no better and no worse than their counterparts in public construction projects.
6. Concerning the question of final completion - Our review found Eastern to be below average, worse than their counterparts in achieving punchlist completion within 60 days of substantial completion and failing to achieve final completion within contract requirements. However, we did not find any instance in which Eastern Contractors abandoned its responsibilities for final completion.
7. Concerning the question of supervision - Our review found Eastern's personnel outlined in their bid for the project to be above average.
8. The issues outlined in the City of Worcester letter and Heery International letter have been adequately resolved with the issuance of Eastern's current Certificate of Eligibility.
9. This final report clearly addresses the bidder eligibility and addresses for the City items raised in the Macomber letter.

Based on our review and analysis of Eastern Contractors bid we find:

- A. Eastern Contractors possess the skill, ability and integrity necessary to faithfully perform the work.
- B. Eastern Contractors Inc. is the lowest responsible and eligible bidder.
- C. The awarding authority has included provisions within the Owner/Contractor contract to manage the concerns over schedule, performance, change orders, punchlist completion and final completion for the project.
- D. Eastern Contractors bid for construction amount for the contract although 7 % below the second bidder does not invalidate their bid.

CT 25 2004 11:42 FR HAS BOSTON 30 3

TO 99512420

P.12/12

FROM FLANSBURGH ASSOCIATE

(FRI) 10 22 2004 10:27/ST. 10:23/NO. 5112755215 P 10

**FLANSBURGH ASSOCIATES**

Based on our determination, the City of Lawrence should award Eastern Contractors Inc., as the lowest responsible and eligible bidder, the contract for constructing the new Lawrence High School.

Sincerely,

FLANSBURGH ASSOCIATES, INC.



Jorge M. Cruz, AIA  
Senior Associate

CC: Doreen Zankowski  
George Collins  
Earl R. Flansburgh  
Dominic Pedulla